

HOUSE BILL 417

By Coleman

AN ACT to amend Tennessee Code Annotated, Title 30; Title 31; Title 32; Title 34; Title 35; Title 36; Title 56 and Title 67, relative to probate, estate administration, wills, guardians and conservators, uniform transfers to minors, trusts, life insurance and taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 30-2-307(d), is amended by deleting the current subsection in its entirety and by substituting instead the following new subsection (d):

(d) The clerk shall file all claims received not later than twelve (12) months from the decedent's date of death. However, filing of claims by the clerk shall not create an inference as to whether such claims are valid or were timely filed. The clerk shall return any claim submitted before the appointment of a personal representative or received more than twelve (12) months from the decedent's date of death.

SECTION 2. Tennessee Code Annotated, Title 32, Chapter 3, is amended by adding the following language as a new, appropriately designated section:

If the residue of the decedent's testamentary estate or the residue of a revocable trust created by the decedent that becomes irrevocable at the settlor's death is devised to two (2) or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to the other residuary devisees in proportion to the interest of each in the remaining part of the residue unless the decedent's will or trust agreement provides for a different disposition.

SECTION 3. Tennessee Code Annotated, Section 32-2-111, is amended by adding the language "and personal property" between the language "real estate" and the language " , without the necessity".

SECTION 4. Tennessee Code Annotated, Section 32-11-104(a), is amended by deleting the current language in its entirety and by substituting instead the following new subsection (a):

(a) Any competent adult person may execute a declaration directing the withholding or withdrawal of medical care to such person, to become effective on loss of competency. The declaration must be in writing and signed by the principal. The declaration is valid if the principal's signature is either attested by a notary public with no witnesses or witnessed by two (2) witnesses without attestation by a notary public. A witness is a competent adult, who is not the agent, and at least one (1) of whom is not related to the principal by blood, marriage, or adoption and would not be entitled to any portion of the estate of the principal upon the death of the principal under any will or codicil made by the principal existing at the time of execution of the declaration or by operation of law then existing. The declaration shall contain an attestation clause that attests to the witnesses' compliance with the requirements of this subsection. The declaration shall be substantially in the form established in § 32-11-105. It is the intent of the general assembly that this subsection have retroactive application.

SECTION 5. Tennessee Code Annotated, Section 34-6-203(a), is amended by deleting subdivision (3) in its entirety and by substituting instead the following new subdivision (3):

(3) The durable power of attorney for health care must be in writing and signed by the principal. The durable power of attorney for health care is valid if the principal's signature is either attested by a notary public with no witnesses or witnessed by two (2) witnesses without attestation by a notary public. A witness is a competent adult, who is not the agent, and at least one (1) of whom is not related to the principal by blood, marriage, or adoption and would not be entitled to any portion of the estate of the principal upon the death of the principal under any will or codicil made by the principal

existing at the time of execution of the durable power of attorney for health care or by operation of law then existing. The durable power of attorney for health care shall contain an attestation clause that attests to the witnesses' compliance with the requirements of this subsection. It is the intent of the general assembly that this subdivision have retroactive application.

SECTION 6. Tennessee Code Annotated, Section 34-6-203, is further amended by deleting subsections (d) and (e) in their entirety and by renumbering subsection (f) as subsection (d).

SECTION 7. Tennessee Code Annotated, Section 34-1-106(a), is amended by adding the following sentence to the end of that subsection:

The guardian ad litem appointed may serve the petition on the respondent.

SECTION 8. Tennessee Code Annotated, Section 34-6-105(c), is amended by deleting the current language in its entirety and by substituting instead the following:

(c) As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under either a durable power of attorney, stating that the attorney in fact does not have actual knowledge of the termination of the durable power of attorney by revocation or death of the principal at the time of the exercise of the power, or a power of attorney that is not durable, stating that the attorney in fact does not have actual knowledge of the termination of the power of attorney by revocation or disability, incapacity or death of the principal at the time of the exercise of the power, is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This subsection does not affect any provision in a power of attorney for its termination by

expiration of time or occurrence of an event other than express revocation in the principal's capacity.

SECTION 9. Tennessee Code Annotated, Title 34, Chapter 6, Part 1, is amended by adding the following as a new section thereto to be designated as follows:

34-6-107.

An attorney in fact is in a fiduciary relationship with the principal, but only to the extent that the attorney in fact undertakes to act under the power of attorney. Among the fiduciary duties required by law, an attorney in fact has a duty to adequately account to the principal, or to any legal representative of the principal appointed by the principal or by a court, for actions taken by the attorney in fact in the exercise of the power of attorney. It is the intent of the general assembly that this section have retroactive application.

SECTION 10. Tennessee Code Annotated, Section 34-6-111, is amended by deleting the current language in its entirety and by substituting instead the following:

The principal of a power of attorney pursuant to §§ 34-6-101 et seq. may direct that the power of attorney is effective at the date signed or may defer the effective date to the date the principal is determined to be disabled or incapacitated. Notwithstanding any language in the document establishing the power of attorney, if the effective date therein is stated as deferred to the time the principal is determined to be disabled or incapacitated, for the limited purposes of authorizing the agent designated in the power of attorney to have access to the principal's medical records, physicians, other medical personnel and to discuss the principal's health situation and particularly to comply with the HIPAA rules, the power of attorney nevertheless is effective at the date of signing and the person designated the attorney in fact shall thereupon be the principal's personal representative as that term is used in the HIPAA rules with the ability to access

immediately the principal's medical records, physicians, other medical personnel and to discuss the principal's health situation for the limited purpose of determining whether the principal is disabled or incapacitated to the extent that the general provisions of the power of attorney become effective.

SECTION 11. Tennessee Code Annotated, Section 35-7-202, is amended by inserting the following new, appropriately designated subdivision:

() "Qualified minor's trust" means any trust, including a trust created by the custodian, that satisfies the requirements of federal Internal Revenue Code § 2503(c) and the regulations implementing that section.

SECTION 12. Tennessee Code Annotated, Section 35-7-221 is amended by designating the current language as subsection (a) and by inserting the following language as a new subsection (b) thereto:

(b) At any time a custodian may transfer part or all of the custodial property to a qualified minor's trust without court order. The transfer terminates the custodianship to the extent of the transfer.

SECTION 13. Tennessee Code Annotated, Section 56-7-201, is amended by deleting the current language in its entirety and by substituting instead the following:

On the death of an insured, any life insurance acquired by the insured or the insured's spouse and payable to the intestate insured's estate benefits the surviving spouse and children and the proceeds shall be divided between them according to the statutes of distribution without being in any manner subject to the debts of the decedent. If the proceeds of the insurance are payable to the estate of a testate decedent or the trustee of a revocable trust of which the decedent was a settlor, the proceeds shall pass as part of the estate or trust and under the dispositive provisions of the will or trust agreement, as ordinary cash, whether or not the will or trust agreement uses any apt or

express words referring to the insurance proceeds, but such proceeds shall not be subject to the debts of the decedent unless specifically charged therewith in the will or trust agreement.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.